



**Water Law News for January 11, 2011**  
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## WATER LAW NEWS JANUARY 11, 2011

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### Daily Environment

REPORT

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Inside EPA's **Risk Policy Report**, 1/11/11

<http://insideepa.com/Risk-Policy-Report/Risk-Policy-Report-01/11/2011/menu-id-130.html>

#### Florida, Industry Oppose EPA Effort To Consolidate Nutrient Criteria Suits

Florida and industry groups are opposing EPA's request for a federal district court in the state to consolidate all existing litigation over the agency's landmark numeric nutrient criteria for Florida's lakes and flowing waters, though EPA says the move is necessary to avoid having differing rulings on the same legal challenges to the criteria.



## REGULATIONS: Rep. Young floats bills seeking moratorium on new rules (01/10/2011)

Gabriel Nelson, E&E reporter

A veteran Alaska lawmaker has introduced a plan to give Congress more control over federal regulations, adding to a long list of options as top Republicans -- and a few Democrats -- think about ways that they could slash away at red tape over the next two years.

Rep. Don Young (R), the former chairman of the House Natural Resources Committee and the House Transportation and Infrastructure Committee, introduced a pair of bills (**H.R. 213** and **H.R. 214**) yesterday that would create a congressional office to review regulations and would call a two year timeout on new rules.

It is the latest nod to an idea that has galvanized the Republicans, who have attributed their victory at the polls last November to a wave of public sentiment that government is getting too big.

Young's main target is health care reform, which has required federal agencies to churn out hundreds of new rules for programs that are being rolled out over the next several years. In addition to those regulations, Young's bill would freeze controversial new rules that are being issued by agencies such as U.S. EPA, the Interior Department and the Department of Energy.

"Hundreds of thousands of pages of regulations are on the books, making the amount of red tape industry has to navigate almost paralyzing," he said in a statement today. "The excess of government has gotten out of hand, and with these bills I am calling on Congress to finally take a hard look at these overreaching rules that stifle American freedoms."

His proposal will vie with several other bills put forward by small-government advocates in Congress. The ideas have proliferated as President Obama has taken flak from Republicans for his administration's new limits on air pollution, coal mining and offshore drilling.

The best-known proposal is the "REINS Act," a piece of legislation introduced in the Senate last session by Sen. Jim DeMint (R-S.C.) and in the House by Rep. Geoff Davis (R-Ky.). The bill, which has not been revived yet this session, would require congressional approval for any "major" rule -- one that would cost \$100 million or more or would have a significant impact on the prices of goods and services.

There is also a proposal from Sen. Rand Paul (R-Ky.), who has suggested that all regulations should face an automatic sunset if they have not gotten the approval of Congress after two years.

These sorts of ideas have gotten some support from moderate Democrats like Sen. Mark Warner of Virginia, who is drafting legislation that would apply the idea of pay-as-you-go budgeting to the regulatory process. If an agency wants to issue a new rule, he says, it should have to eliminate another rule of equivalent impact to prevent the proliferation of burdensome rules.

These proposals have drawn the ire of Obama administration supporters, who say that better regulations -- not fewer of them -- could have prevented disasters such as the Gulf of Mexico oil spill. These critics, along with some Republicans, have cautioned conservatives about trying to roll back public health and safety protections, pointing to a backlash against the Republicans in Congress when they took a similar approach under President Clinton (*E&E Daily* , Dec. 1, 2010).

Matt Madia, a regulatory policy analyst at the left-leaning advocacy group OMB Watch, said the Young proposal and similar bills might allow lawmakers to score political points, but they don't make sense when the benefits of regulation are compared to the costs.

"It's easy to say, 'Regulation is bad, and we want to rein it in,'" Madia said. "What people aren't doing is connecting the dots. Would we want another Wall Street collapse? Would we want another oil spill? Because those are the outcomes that we're looking at."

## **Proposed congressional watchdog**

Under Young's moratorium bill, a federal agency that wants to issue new regulations would need to apply to the White House Office of Management and Budget for a waiver, adding another hurdle to rulemaking. The administration would need to conclude that the rules were justified by an imminent threat to health or safety, or another emergency.

All military regulations would be spared from the moratorium, along with foreign policy rules, such as free-trade deals.

Like another bill that he introduced last session, Young's second bill would create a watchdog agency called the Congressional Office of Regulatory Analysis, which would be tasked with issuing reports on the costs and benefits of all major rules.

The office, led by a congressionally appointed director, would require federal agencies to review the need for their regulations. They would need to phase out or rework any rules that are no longer deemed necessary.

Experts say these types of bills will likely have the votes to pass in the House, where the Republicans have a commanding majority.

As with many other issues, the battleground will be the Senate. In a recent *Washington Post* op-ed, Warner struck a tone of compromise, calling his bill a "common-sense effort for a more appropriate regulatory balance."

"No one is seriously questioning the need for common-sense rules of the road to protect American consumers, public health and our environment, especially in the wake of the BP oil-rig blowout in the Gulf of Mexico and the 2008 near-meltdown of several of our nation's leading financial firms," he wrote last month. "But our current regulatory framework actually favors those federal agencies that consistently churn out new red tape."

But the proposal was criticized by liberal organizations such as the Center for Progressive Reform. Over the past decade, regulations produced between \$128 billion and \$616 billion in benefits at a cost of \$43 billion to \$55 billion, wrote Sidney Shapiro, a law professor at Wake Forest University, in a blog post for the advocacy group.

"The presumption that we've got lots of useless regulations in place plays off of years of conservative rhetoric about how regulatory red tape is choking American business," Shapiro wrote. "If Senator Warner really believes that FDA has some superfluous, economy-choking food safety regulations, he ought to identify them, and explain why they should be eliminated."

**[Click here](#)** to read the moratorium bill.

**[Click here](#)** to read the watchdog agency bill.

## **GULF SPILL: With commission report expected today, lawmakers plan probes of findings (01/11/2011)**

Katie Howell, E&E reporter

Lawmakers anxious to examine the details of a presidentially commissioned report on last summer's Gulf of Mexico oil spill already are scheduling congressional hearings on the findings that will be officially released later this morning.

The highly anticipated report from the National Commission on the BP Deepwater Horizon Oil Spill and Deepwater Drilling likely will include a set of policy recommendations to beef up offshore drilling safety as well as a push for the oil industry to establish a self-policing safety institute. The seven-member presidentially appointed panel is set to issue the recommendations and other findings during a news conference in Washington today.

But lawmakers are not waiting to hear the report's final details before scheduling face time with its lead authors.

House Natural Resources Chairman Doc Hastings (R-Wash.) yesterday said he will convene a hearing on the report later this month, and Senate Energy and Natural Resources Chairman Jeff Bingaman (D-N.M.) last week said his "first order of business" for the panel will be to probe the spill report.

The commission's co-chairmen -- Bill Reilly, a former U.S. EPA administrator under President George H.W. Bush, and former Democratic Florida Sen. and Gov. Bob Graham -- are slated to testify at both hearings on Jan. 26.

"The committee will be particularly interested in the commission investigation into the causes and findings related to the April 20, 2010, oil spill and ongoing federal response," Hastings wrote in a **letter** to Reilly and Graham. "In addition, the committee will be interested in your recommendations, and other proposals for drilling on the Outer Continental Shelf going forward."

The commission, which released a partial draft of its findings last week, is not expected to include many surprises in its final report. Still, the oil industry and environmentalists alike are anxiously awaiting the official findings.

One of the likely proposals that has gotten a cool reception from industry is the idea of creating a self-regulating agency to act as a safety watchdog, similar to the nuclear industry's Institute of Nuclear Power Operations, or INPO. The oil and gas industry does not oppose the idea on principle, but it has questioned the logistics.

Rex Tillerson, chairman and CEO of Exxon Mobil Corp., which has one of the industry's most respected safety programs, said there would be challenges to imposing a self-policing regulatory agency within the offshore oil and gas industry.

"There are distinct differences between the nature of the nuclear power industry and the oil and gas industry, in particular deepwater," Tillerson said during a spill commission hearing last fall. "Nuclear power plants are fixed sites, and conditions don't change around those sites. They operate in a different type of environment, and most technology is well-known, as opposed to our industry, which is always moving to different locations, different environments" (*E&ENews PM* , Nov. 9, 2010).

And the American Petroleum Institute, the industry's main trade group, has proposed its own plan to create a new industrywide safety program that would adapt some of the best features of INPO as well as the American Chemistry Council's safety standards program. API says the new institute would use third-party auditing to regulate companies' safety and environmental management programs and would operate separately from the trade group's lobbying arm.

But the commission's staff has expressed opposition to positioning the new institute within a trade group that lobbies lawmakers and regulators.

## **NATURAL GAS: Pa. town with disputed contamination may be part of EPA study (01/10/2011)**

U.S. EPA is considering using Dimock, Pa., as a multiyear case study on the natural gas drilling process known as hydraulic fracturing, or fracking.

The town in Pennsylvania is at the center of a dispute between EPA and Cabot Oil & Gas Corp. over 18 methane-contaminated water wells. The state Department of Environmental Protection recently reached a settlement with Cabot over the wells. The department blames Cabot for the contamination, while the company says it is not at fault.

EPA is looking for towns to be part of at least a two-year, \$1.9 million study and has been in contact with some of the town's affected landowners.

"We received many nominations for case studies," said Betsaida Alcantara, an EPA spokeswoman. "We are evaluating the nominations, including Dimock, to determine which of them we will undertake as case studies."

Cabot spokesman George Stark said the company will participate in such a study because "too much misinformation exists today regarding hydraulic fracturing." Dimock resident Victoria Switzer, who is suing Cabot over the contamination, said that she is hopeful EPA will take on Dimock in its study.

"We're waiting. I don't have any assurances that they're going to do it, but I'm in prayer mode," Switzer said. "I'm hopeful that if EPA were involved, that they would gain from the experience. I don't have anywhere else to go. They're our last chance" (Jon Campbell, *Binghamton [N.Y.] Press & Sun-Bulletin* , Jan. 7). -- AP

## **NATURAL GAS: EPA says Texas company not following contamination order (01/10/2011)**

Texas-based Range Resources Corp. is fighting U.S. EPA's claim that the company violated a December enforcement order that required it to deal with two water wells contaminated by methane.

EPA says that the company did not take "immediate actions to ensure that neighboring wells are not being contaminated" in Parker County, Texas, and that it did not investigate the wells "to determine precisely how the contamination happened." EPA said that it is concerned natural gas could enter homes through water lines and lead to an explosion.

According to Range Resources spokesman Matt Pitzarella, "virtually everything" in the enforcement order "has already been done," and the company will do additional water tests for anyone who asks. The company also said that it has not found a link between its drilling activities and the methane contamination in the wells.

The Texas Railroad Commission will hold a hearing on the issue on Jan. 18. EPA said it would not participate in the hearing.

"We hope that the hearing brings about a full and independent review of Range Resources' activities by the [commission]," the agency said. "EPA's emergency order remains in effect. Range is subject to penalties up to \$16,500 per day and additional federal enforcement by the Department of Justice" (Jack Smith, *Fort Worth Star-Telegram* , Jan. 8). -- AP

## **CHESAPEAKE BAY: Farm bureau threatens lawsuit over EPA pollution plan (01/10/2011)**

Water pollution control efforts in the Chesapeake Bay could ruin farming in the region and set the standard for methods that would harm agriculture on a national scale, the president of the American Farm Bureau Federation warned yesterday.

U.S. EPA's plan is to put the bay on a so-called diet that will restrict the amount of nitrogen, phosphorus and sediment flowing into the waters. Since farmers and animal feeding operations are the main offenders when it comes to the spread of these pollutants, Bob Stallman, head of the Farm Bureau, said his organization would file a lawsuit against EPA.

"This diet threatens to starve agriculture out of the entire 64,000-square-mile Chesapeake Bay watershed," Stallman said.

President Obama has backed the EPA plan as farm runoff, among other sources of pollution, has caused algae blooms that block sunlight from penetrating surface waters, depleting oxygen supply. Bay oyster and blue crab populations in the region have been nearly wiped out.

The Farm Bureau opposes many of EPA's other plans including greenhouse gas regulation and chemical spray limitations. Stallman called EPA a "clear and present danger" to agriculture.

"We will not stand idly by while opponents of today's American agriculture try to drag us down, try to bury us in bureaucratic red tape and costly regulation, and try to destroy the most productive and efficient agricultural system in the world," he said. "Our message to the new Congress is clear: It is time to stop the EPA" (*AP/Baltimore Sun* , Jan. 9). -- **PK**

## **INVASIVE SPECIES: Snake owners seething about new restrictions (01/10/2011)**

Foreign snakes could pose a threat to ecosystems across the southern United states, Fish and Wildlife Service officials say. And the warning prompted the U.S. government to ban the importation and interstate transportation of nine foreign snake species.

"It is a joke," said Jeremy Stone, a snake owner and breeder from Lindon, Utah, of the science behind the government's decision.

The Fish and Wildlife Service argued that these snakes, which include boas and some anacondas and pythons, met the legal criteria for invasive species. The organization has had problems with Asian carp and zebra mussels, but this is the first time the Fish and Wildlife Service has targeted animals that so many people -- roughly 1 million in America -- keep as pets.

The ban is infuriating snake owners and breeders as well as zoologists and some conservationists, all of whom could stand to lose financially.

Andrew Wyatt, president of the U.S. Association of Reptile Keepers, said the ruling has implications for other types of animals, as well.

"All amphibians are injurious and cats and hogs can't be far behind," he said.

The government has been investigating the effect of Burmese pythons on the Everglades. It was easy enough to limit ownership of the snakes within Florida, but there was nothing to stop snakes from being transported from Georgia.

Thomas Strickland, assistant secretary for fish and wildlife and parks, defended the government's decision.

"You are not dealing with hamsters here," he said. "I was down in the Everglades, and it took four people to hold a 19-foot Burmese python. These things wreak havoc" (Leslie Kaufman, *New York Times* , Jan. 8). -- **PK**

## **OHIO: New chief of state EPA takes aim at permit backlog (01/10/2011)**

In introducing the new director of the state's Environmental Protection Agency, Ohio Gov. John Kasich said Scott Nally would be focused on efficiency.

"Guys around the state, you mention the EPA to them and they have palpitations," said the Republican Kasich. "Delays and paperwork and bureaucracy is going to come to an end."

Nally, an assistant commissioner for Indiana's Department of Environmental Management, has promised to cut Ohio's 800-permit backlog to just four, after bringing Indiana's backlog down to five. In an interview, Nally said he would establish "tracking and accountability, both internal and external" to reduce the backlog of permits businesses need to start operations.

Businesses have long complained that the state EPA is slow to issue permits limiting air and water pollution and construction damage to natural areas. Outgoing EPA officials say they filled the requests on time and 89 of the pending 682 requests have gone beyond the 180-day deadline. And environmental groups have accused the agency of being too business-friendly in the past.

Indiana officials said much of Nally's work was done behind the scenes and that there was little indication of how he would perform in a more public position. Kasich spokesman Rob Nichols said Nally would also focus on environmental issues, particularly the toxic air pollution from power plants and factories (Spencer Hunt, *Columbus Dispatch* , Jan. 10). -- **JP**

**ClimateWire -- Tue., January 11, 2011 -- [Read the full edition](#)**

### **1. RENEWABLE FUELS: Much-touted cellulosic ethanol is late in**

**making mandated appearance**

A projected shortfall in the production of an important green energy alternative could hurt U.S. efforts to move away from fossil fuels, a *ClimateWire* analysis has found. U.S. EPA figures indicate that in the second half of 2010, not a drop of cellulosic ethanol was commercially blended with gasoline. William Brown, an analyst with the U.S. Energy Information Administration's Office of Oil, Gas and Biofuels Analysis, said that the "curious string of zeros" sends up red flags for that year's total production. Overall, he said, the outlook appears grim.

**TODAY'S STORIES**

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